

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

KODY CREE PATTEN,

Petitioner

v.

STATE OF NEVADA, *et al.*,

Respondents

Case No. 3:22-cv-00310 RCJ-CLB

**Order**

This court granted 28 U.S.C. § 2254 habeas corpus petitioner Kody Cree Patten's motion for counsel and appointed the Federal Public Defender to represent Patten in this action. (ECF No. 14.) Margaret W. Lambrose and Jonathan M. Kirshbaum of the Federal Public Defender's Office have appeared as counsel on behalf of Patten. (ECF Nos. 17, 18.) The court now sets a schedule for further proceedings in this action.

IT IS THEREFORE ORDERED that counsel for petitioner meet with petitioner as soon as reasonably possible, if counsel has not already done so, to: (a) review the procedures applicable in cases under 28 U.S.C. § 2254; (b) discuss and explore with petitioner, as fully as possible, the potential grounds for habeas corpus relief in petitioner's case; and (c) advise petitioner that all possible grounds for habeas corpus

1 relief must be raised at this time in this action and that the failure to do so will likely  
2 result in any omitted grounds being barred from future review.

3 IT IS FURTHER ORDERED that petitioner has **90 days** from the date of this  
4 order to file and serve on respondents an amended petition for writ of habeas corpus.

5 IT IS FURTHER ORDERED that respondents have **45 days** after service of an  
6 amended petition within which to answer, or otherwise respond to, the amended  
7 petition. Any response filed should comply with the remaining provisions below, which  
8 are entered pursuant to Habeas Rule 5.

9 IT IS FURTHER ORDERED that any procedural defenses raised by respondents  
10 in this case be raised together in a single consolidated motion to dismiss. In other  
11 words, the court does not wish to address any procedural defenses raised herein either  
12 in seriatum fashion in multiple successive motions to dismiss or embedded in the  
13 answer. Procedural defenses omitted from such motion to dismiss will be subject to  
14 potential waiver. Respondents should not file a response in this case that consolidates  
15 their procedural defenses, if any, with their response on the merits, except pursuant to  
16 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If  
17 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they  
18 should do so within the single motion to dismiss not in the answer; and (b) they should  
19 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set  
20 forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural  
21 defenses, including exhaustion, should be included with the merits in an answer. All  
22 procedural defenses, including exhaustion, instead must be raised by motion to dismiss.

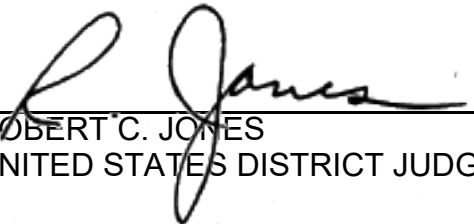
1 IT IS FURTHER ORDERED that, in any answer filed on the merits, respondents  
2 must specifically cite to and address the applicable state court written decision and state  
3 court record materials, if any, regarding each claim within the response as to that claim.

4 IT IS FURTHER ORDERED that, when respondents file an answer or other  
5 responsive pleading, petitioner will have **30 days** after service of the answer or  
6 responsive pleading to file and serve his response.

7 IT IS FURTHER ORDERED that any additional state court record exhibits filed  
8 herein by either petitioner or respondents be filed with a separate index of exhibits  
9 identifying the exhibits by number. The CM/ECF attachments that are filed also must be  
10 identified by the number of the exhibit in the attachment. Each exhibit must be filed as a  
11 separate attachment.

12 IT IS FURTHER ORDERED that, at this time, the parties send courtesy copies of  
13 any responsive pleading and all indices of exhibits only to the Reno Division of this  
14 Court. Courtesy copies are to be mailed to the Clerk of Court, 400 S. Virginia St., Reno,  
15 NV, 89501, and directed to the attention of "Staff Attorney" on the outside of the mailing  
16 address label. No further courtesy copies are required unless and until requested by the  
17 court.

18  
19 DATED this 9th day of April 2024.

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21   
22 ROBERT C. JONES  
23 UNITED STATES DISTRICT JUDGE